



**House
Legislative
Analysis
Section**

Olds Plaza Building, 10th Floor
Lansing, Michigan 48909
Phone: 517/373-8486

LIABILITY OF VOLUNTEERS

House Bill 4533 as introduced
First Analysis (5-4-93)

Sponsor: Rep. Lyn Bankes
Committee: Judiciary

THE APPARENT PROBLEM:

In these litigious times, possible exposure to lawsuits is of increasing concern to people who do volunteer work and to the organizations that rely on them. For example, someone who might once have been willing to look after someone else's children on a canoe trip may now decline to accept the responsibility. Without some sort of protection for volunteers, nonprofits fear growing problems in finding willing helpers. Legislation to provide protection has been proposed.

THE CONTENT OF THE BILL:

The Nonprofit Corporation Act allows a nonprofit corporation's articles of incorporation to include provisions not inconsistent with various specified provisions. Among those is a provision that a volunteer director is not personally liable for monetary damages for a breach of the director's fiduciary duty. However, the articles may not limit a director's personal liability for any of several listed things such as gross negligence or intentional misconduct. The bill would instead allow limits on a director's liability for those listed things, and allow a volunteer director's liability to be eliminated.

The bill also would allow a nonprofit corporation to assume liability for all acts and omissions of a nondirector volunteer occurring on or after January 1, 1994, if certain conditions were met. The volunteer would have to have been acting in good faith and within what he or she believed was the scope of his or her authority; the volunteer's conduct could not have amounted to gross negligence or willful and wanton misconduct; the volunteer's conduct could not have been an intentional tort; and, the volunteer's conduct could not have been a tort involving a motor vehicle to which the no-fault law would apply.

If a nonprofit assumed liability for nondirector volunteers as described above, a claim for monetary damages could not be brought against a volunteer,

but would have to instead be brought against the corporation.

MCL 450.2108 and 450.2209

FISCAL IMPLICATIONS:

The House Fiscal Agency says that the bill would have no fiscal implications. (5-3-93)

ARGUMENTS:

For:

By allowing a nonprofit corporation to assume liability for its volunteers, the bill should ease volunteers' fears about potential lawsuits, and counter any related reluctance to offer volunteer services. The bill would help volunteers and the organizations which rely on them.

Against:

If the aim is to address only liability as it relates to ordinary volunteers, then the bill is overbroad, for it would amend existing provisions on directors to allow far greater limits on their potential liability than is now allowed. An amendment is necessary to preserve the current meaning of the provision on directors.

Against:

Reportedly, what nonprofits want is to be able to have their liability insurance cover volunteers. If this is the case, then the bill takes the wrong approach to the problem. It would make more sense to allow a nonprofit corporation to indemnify its volunteers, rather than assume liability for them.

Response:

If the bill were to provide merely for indemnification of volunteers, it would not protect volunteers from the distress and expense of having to defend themselves against lawsuits.

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Rebuttal:

Neither would the bill as it stands protect volunteers from being named as defendants in liability lawsuits. The likely scenario is for a plaintiff to bring suit against all potential defendants, and then for the judge remove certain defendants who are wrongly named.

Against:

Underlying the bill is the idea that a person should not have to be responsible for his or her mistakes. Volunteers sometimes accept an enormous amount of responsibility in accepting duties regarding children or invalids. Statute should not absolve them of that responsibility; rather, the extent of that responsibility and whether it was appropriately discharged should be left to the justice system to sort out.

POSITIONS:

The Michigan League of Savings Institutions supports providing immunity to nondirector volunteers. (4-28-93)

The United Way of Michigan supports indemnifying nondirector volunteers. (4-28-93)

The Michigan Trial Lawyers Association opposes the bill, but would not oppose indemnification of volunteers. (4-30-93)